

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

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| BILLY R. WILLIAMS, | : | |
| | : | |
| Plaintiff, | : | Civil Action No. 03-239E |
| | : | |
| vs. | : | Hon. Maurice B. Cohill, Jr. |
| | : | |
| | : | |
| PENNSYLVANIA STATE POLICE, AN | : | |
| AGENCY OF THE COMMONWEALTH | : | |
| OF PENNSYLVANIA, | : | |
| | : | Electronically Filed |
| Defendant. | : | |

**PLAINTIFF'S BRIEF IN SUPPORT OF MOTION IN LIMINE
TO EXCLUDE/STRIKE DEFENDANT'S PROPOSED EXHIBIT PSP 61 PURSUANT
TO RULES 401-403 AND 802 OF THE FEDERAL RULES OF EVIDENCE**

I. Statement of Relevant Facts.

In this action, Plaintiff has asserted claims under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e et seq. against the Defendant. Specifically, Plaintiff claims that the Defendant subjected him to a hostile environment because of his race and that the Defendant discriminated against him because of his race when it transferred him in September 2000 and January 2001 to less prestigious positions with substantially different material responsibilities.

Plaintiff and Defendant exchanged exhibits on November 28, 2007 and it was at that time that Plaintiff's counsel Neal A. Sanders noticed Defendant was going to offer Exhibit PSP 61 in their defense.

II. Argument.

A. Evidence Relating To The Racial Consent Decree Issued Against Defendant PSP and Defendant 1999 Plan To Try And Show Compliance With Said Decree Should Be Excluded Under Rules 401-403 And 802.

At trial Defendant intends to introduce Defendant's Exhibit PSP 61 Pennsylvania State Police Equal Employment Opportunity Plan January 1, 1999 to December 31, 1999. One purpose is to defend the alleged racial discrimination against the Plaintiff by arguing that no racial discrimination occurred to Plaintiff because Defendant is trying to improve its hiring and promotional deficiencies from the past. (Defendant's Exhibit 61)

First, this case is not a hiring nor a promotion case. This is a demotion case and a hostile work environment based on race case as well. Defendant's PSP Exhibit 61 is not relevant to this case. PSP Exhibit 61 is more prejudicial then probative. It is not relevant for many reasons but for sure one irrelevancy is PSP 61 is not limited to Troop D and E, Mercer, Butler, Erie and New Castle but pertains to the entire Commonwealth of Pennsylvania. Plaintiff does not claim that the Defendant practices race

discrimination state wide, only with respect to Plaintiff in Troop D and E. (Areas pertinent thereto)

Further, Defendant's PSP Exhibit 61 is prejudicial because it forces the Plaintiff into making claims Plaintiff has never raised in this case.

The Courts have found that this issue is subject to the standard of abuse of discretion. Plaintiff believes a careful look by this Court at this effort by Defendant to expand the scope of Plaintiff's claim herein beyond what it has been so far will result in this Plaintiff's Motion being granted. [Angelo v. *Bacharach Instrument Co.*, 555 F.2 1164, 1176 (3d Cir. 1977) (exclusion confirmed because trial judge could have concluded that the exhibit had minimal probative value that was substantially outweighed by the dangers of unfair prejudice);] [Hall v. *Western Prod. Co.*, 988 F.2d 1050, 1058 (10th Cir. 1993) (excluding state agency's findings because only purpose of admission would be to suggest to jury that it reach same conclusion).]

By reason of the foregoing, this Court should find that the subject matter contained in Defendant's Exhibit 61 is inadmissible under Federal Rules of Evidence 401-403 and 802.

III. Conclusion.

For the foregoing reasons, Defendant's Exhibit 61 and any evidence relating to it is inadmissible under Federal Rules of Evidence 401-403 and 802.

Respectfully submitted,

LAW OFFICES OF NEAL A. SANDERS

Dated: November 29, 2007

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